

## The complaint

Mr and Mrs S complain that Leeds Building Society (“Leeds”) gave them misleading information about the Early Repayment Charge (ERC) they would need to pay if redeeming their mortgage at particular points in time. They would like to be refunded the difference between an ERC of 5% of the outstanding balance, and 4%.

## What happened

In November 2019 Leeds made Mr and Mrs S a product transfer offer to switch their mortgage to a five-year fixed interest rate. Mr and Mrs S accepted that offer and transferred their mortgage product.

In December 2021 Mr and Mrs S sold the property in question, and expected to pay an ERC of 4% of the remaining mortgage balance. This was based on the information they’d read in the product transfer offer from November 2019. However, Leeds charged them 5%, which Mr and Mrs S queried. Leeds explained that the 4% ERC didn’t start until January 2022, and so because they redeemed the mortgage in December 2021, 5% was the correct amount. It said that, although the product transfer offer did set out that the 4% ERC would begin on 1 December 2021, in fact that was only an illustration. It said that because the five-year fixed term didn’t actually start until 1 January 2020, the 4% ERC wasn’t applicable until 1 January 2022.

Unhappy with Leeds’ response, Mr and Mrs S came to this service, and ultimately the investigator thought that Leeds hadn’t acted fairly and reasonably. She thought the information was unclear, and so upheld the complaint. Leeds doesn’t accept that. It says that Mr and Mrs S ought to have known that their product transfer didn’t complete until 1 January 2020, and so that the ERC figures in the product transfer offer weren’t accurate.

## What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having done so, I uphold this complaint, essentially for the same reasons as the investigator. I’ll summarise the key issues.

Essentially this case turns on whether I find that Leeds have treated Mr and Mrs S fairly and reasonably in terms of the provision of clear and not misleading information.

Leeds says it understands how this misunderstanding has happened, and that it has provided “...*feedback onto the department who produces the offers.*” It would appear that its process is for the offer letter to be based on assumptions about the product transfer completing on the first day of the following month in all cases – regardless of the actual circumstances of the customer. So the product transfer letter sent to Mr and Mrs S on 29 November 2019 contains several references to figures and calculations being based on the assumption that the transfer will complete on 1 December 2019.

On the one hand, that timeframe could be described as clearly implausible. Surely Mr and Mrs S ought to have realised, therefore, that much of the information in the product transfer offer letter needed to be treated with caution?

On the other hand, Leeds is required to provide customers with clear and not misleading information. It has accepted that the way its offers are set out can be misleading for its customers. In the circumstances of this case, I don't think it's far or reasonable for Mr and Mrs S to suffer a loss as a result.

Leeds says that other factors ought to have made it clear to Mr and Mrs S that the product transfer did not complete until 1 January 2020. For example, it cites references in other letters to their existing deal not ending until 31 December 2019. And to the fact that Mr and Mrs S were not charged an ERC on that deal – meaning that it ought therefore have been obvious to them that the product transfer hadn't happened before that date. Leeds says that Mr and Mrs S *“...have therefore received a consistent message from us that their existing product would end 31<sup>st</sup> December [2019] and the new product would be effective from 1<sup>st</sup> January [2020] unless they instructed us otherwise and paid the existing product ERC.”*

I disagree. In this instance, I find that Leeds' chosen process in generating offer letters led to Mr and Mrs S being provided with avoidably unclear information. I also note and place weight on a follow up letter to Mr and Mrs S dated 3 December 2019, which opens with:

*“...we're pleased to let you know that your product transfer is now complete.”*

That statement cannot be described as accurate, and I have not had an explanation as to why Leeds included it in the letter in question.

Mr and Mrs S received a product transfer offer setting out that from 1 December 2021 the ERC on the mortgage would be 4%. (There is a sentence saying Leeds has assumed the transfer will take place on 1 December 2019. But nothing to highlight that, if it doesn't, then the following details about the ERC will be incorrect.) They then received a letter dated 3 December 2019 telling them the transfer was complete. I don't agree that they should have known that wasn't correct, and in the round, I don't think Leeds provided clear information on this point.

So I think Mr and Mrs S had a reasonable expectation that when they redeemed the mortgage in December 2021, that would be subject to an ERC of 4% of the outstanding balance. It therefore follows that I uphold this complaint.

### **Putting things right**

In order to put things right for Mr and Mrs S, Leeds Building Society must do the following:

A) Recalculate the ERC that Mr and Mrs S paid in December 2021 on the basis of it being 4% of the outstanding balance, not 5%.

B) Refund the difference between that figure and the ERC that Mr and Mrs S paid to them.

C) Add 8% simple interest\* to the refund amount from the date the ERC payment was made to the date of settlement.

E) Pay Mr and Mrs S up to £100 in compensation for the distress and inconvenience that has been caused to them. If Leeds has already paid the £25 it offered in its email of 20 January 2022, then it must pay a further £75. If not, then it should pay the full £100.

\*HM Revenue & Customs requires Leeds Building Society to deduct tax from this interest. It should give Mr and Mrs S a certificate showing how much tax it's deducted, if they ask for one.

### **My final decision**

For the reasons I've explained, I uphold this complaint and direct Leeds Building Society to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 8 September 2022.

Siobhan McBride

**Ombudsman**